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Letter dated 20 December 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 19 October 2004 (S/2004/841). The Counter-Terrorism Committee has received the attached fourth report from Panama submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Andrey I. Denisov
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 16 December 2004 from the Permanent Representative of Panama to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to transmit the reply of the Government of Panama to the questionnaire attached to your note dated 20 September 2004, pursuant to Security Council resolution 1373 (2001) (see appendix).

(*Signed*) Ricardo Alberto **Arias**
Ambassador
Permanent Representative

Appendix*

[Original: Spanish]

Republic of Panama
Ministry of Foreign Affairs

Fourth report of the Republic of Panama to the Counter-Terrorism Committee of the Security Council, submitted pursuant to paragraph 6 of resolution 1373 (2001)

Implementation measures

Protection of the financial system

1.1 The CTC would like to be able to ascertain whether Panama's Financial Analysis Unit for the Prevention of Money Laundering and Financing of Terrorism is adequately structured, funded, staffed and provided with sufficient technical and other resources fully to equip it to perform its mandate. Please include data in support of your response to the above question, and please also provide information concerning the independence and autonomy of this unit fully to perform its functions.

The Financial Analysis Unit for the Prevention of Money Laundering and Financing of Terrorism is structured as follows: the offices of the Director General and his deputy, each with its own secretariat; the Analysis Department, the Legal Advisory and International Affairs Unit, the Technology Unit, and the Data Processing Unit. As for financing, the Financial Analysis Unit has a reasonable level of financial resources to enable it to carry out its mandate.

Each of the aforementioned areas of work is staffed by appropriate personnel, who receive regular skills development and training in areas currently affecting their work.

The Unit has the necessary technological equipment and tools in order to conduct very high-quality research. One such tool is the iBase system, a database program currently used by most financial analysis units. Information is received by completely digital means, which improve data control and security.

The Unit is an entity with independent authority to manage and analyse the information received in the exercise of its functions, pursuant to the provisions of article 2 (e) of Executive Decree No. 78 of 5 June 2003, which gives it the power to submit information directly to the Attorney General when it believes that the Office of the Public Prosecutor should launch an investigation.

1.2 Regarding the reporting obligations described in the report S/2003/701 at pages 4 to 7, the CTC would appreciate receiving more details on the operation of this machinery. In particular, the CTC would appreciate learning the number of suspicious transactions that have been reported to the Panamanian Financial Intelligence Unit in recent years. How many transfers did banks freeze, after doubts have been expressed in relation to certain transactions?

* The attached documentation may be consulted in the Secretariat.

Have there already been convictions of financial intermediaries in Panama for a "failure to report suspicious transactions"? What are the penalties that can be incurred, and what have actually been handed down?

For the number of suspicious transactions that have been reported to the Unit, see the appendix to the present report, which contains statistics on reports of suspicious transactions and fines.

We do not currently have statistical data on convictions of financial intermediaries.

As for penalties that can be incurred by such offenders, article 8 of Act No. 42 of 3 October 2000, which establishes measures for the prevention of money-laundering, specifies that persons failing to comply with its provisions shall be liable to fines ranging from $5,000 to $1 million, without prejudice to the provisions of the Penal Code and other laws. Information concerning the penalties applied can be found in the appendix.

1.3 Regarding the obligation to determine "the economic ownership" of a bank account described in the report S/2003/701 at pages 8-9, have any financial intermediaries been convicted in Panama for "inadequate vigilance" in verifying economic ownership? If so, please elaborate.

To date, we have not determined whether any intermediary has been convicted for "inadequate vigilance" in verifying economic ownership.

Effectiveness of counter-terrorism machinery

1.4 Regarding the effectiveness of anti-terrorist strategy, subparagraph 2 (b) of the resolution requires States to take steps to prevent the commission of terrorist acts. In this regard, please outline any special anti-terrorist policies that Panama has developed that are aimed at preventing the commission of terrorist acts in the following areas:

- **Criminal investigation and prosecution;**
- **Links between terrorism and others criminal activities;**
- **Physical protection of potential terrorist targets;**
- **Strategic analysis and forecasting of emerging threats.**

Concerning criminal investigation and prosecution, the Unit has sent a considerable number of its officials on training courses in anti-terrorist measures. These courses have also been taken, inter alia, by United States investigative agencies.

Under Executive Decree No. 78 of 5 June 2003 the Unit may, in addition to investigating money-laundering, look into cases which may be related to the financing of terrorism.

In 2003, pursuant to Security Council resolution 1373 (2001), Panama adopted Act No. 50 which added a chapter entitled "Terrorism" to the section of the Penal Code relating to collective security. This legal text defines the offence of terrorism, as well as its financing, and sets out the corresponding penalties.

Act No. 50 also added a paragraph to article 127 of the Judicial Code, providing for the superior courts to try at first instance cases involving terrorist offences.

As can be observed in this Act, article 264 (a) describes what is involved in terrorist acts, and the following articles set out the connections with other offences considered to be related to terrorist activity, such as financing, assistance and concealment or transfer of funds or goods.

Concerning the physical protection of potential terrorist targets, the Panamanian police authorities have recently coordinated an exercise involving reactions to possible threats against the Panama Canal, jointly with senior officers of the armed forces of the United States and of a number of Latin American and Caribbean countries.

It should be noted that there are mechanisms and requirements which have been in force since before the events of 11 September 2001, for the prevention of accidents and incidents at sea. Since the Panama Canal is a structure of international public utility, it is governed by external maritime transport standards. The Panama Canal Authority has continually strengthened all its protection and security measures, including a Risk Analysis Group for ships passing through the canal.

The Authority has increased the number of personnel protecting its installations, access points to the canal, and other sites. It has also invested in equipment and technology to reduce the risks.

In this area, it has also concluded bilateral agreements to counter the threat of terrorism and to plan courses of action in the event of incidents on a scale too great for it to deal with.

The Republic of Panama recognizes the importance of prevention through the forecasting of terrorist threats. It has therefore spared no effort in the training and instruction of experts in the analysis of preventive measures to minimize the risks.

1.5 The CTC would be interested in learning whether Panama has encountered any particular difficulties regarding law enforcement and/or the gathering of intelligence in relation to the above areas. If so, please provide a brief description of what these difficulties were. The CTC would also find it helpful to receive information on recent successful operations in these areas. In providing examples, the CTC would like to make it clear that it does not expect Panama to supply information in respect of ongoing investigations or judicial processes, if to do so would prejudice the proper conduct of an investigation or judicial process.

We believe that, although commutation and pardon are the exclusive, sovereign privilege of States, their granting to accused or convicted persons may be incompatible with the efforts of the international community to effectively prevent and combat terrorism.

As for difficulties in the gathering of intelligence, we have not experienced such difficulties in general terms, in light of the fact that Panama is a State party to a considerable number of international treaties relating to legal assistance and cooperation for the sharing of information.

It can also be said that there have been no obstacles to the holding of the international joint exercises which have been conducted in our territorial waters and the Canal Zone.

1.6 Specifically regarding criminal proceedings, subparagraph 2 (e) of the resolution requires States, inter alia, to ensure that terrorists and their supporters are brought to justice. The CTC would be grateful to know if there are any specific counter-terrorist measures applied in criminal proceedings. In this same regard, does Panama train its administrative, investigative, prosecutorial and judicial authorities to enforce its laws in relation to:

- **Typologies and trends in terrorist financing methods and techniques;**
- **Techniques for tracing criminal properties and funds with a view to their seizure and confiscation?**

Within the penal procedures of the Republic of Panama, as was stated under question 1.4 on criminal investigation and prosecution, the Penal Code defines and penalizes the offence of terrorism with penalties between 15 and 20 years' imprisonment. Anyone who knowingly or intentionally encourages or assists in activities carried out by individuals or organized groups with the intention of performing terrorist acts, even without participating in such activities, incurs a sentence of 8 to 10 years; and the same penalty applies to anyone who conceals, shelters, accommodates or recruits persons to engage in terrorist acts or join groups for that purpose.

Effectiveness of customs, immigration and border control

1.7 Subparagraph 2 (g) of the resolution requires States to have in place effective border controls in order to prevent the movement of terrorists and terrorist groups.

Passengers and cargo in Panama are monitored by separate bodies, namely, the Directorate General of Customs and the National Directorate of Migration and Naturalization.

In accordance with Panamanian legislation, the Directorate General of Customs is the body responsible for monitoring and supervising the passage of goods, persons and vehicles through the country's frontiers, its ports equipped for external trade and its airports, taking the appropriate actions in respect of international goods traffic in order to collect duty on such goods, and preventing, prosecuting and suppressing customs-related offences.

These two government bodies, however, work very closely together. They also provide support to each other when one of them requires particular information in the context of an investigation.

Their activities are coordinated in cases which, by their nature, call for joint participation by the two agencies.

The Directorate General of Customs also inspects, monitors and supervises movements of cargo through Panamanian airports.

As for the role of the customs agency at the country's borders, it is empowered to require compliance with legal and regulatory provisions governing movements of persons, goods and means of transport through places which are equipped for

foreign trade, to provide information on the provisions applicable to such movements, and to penalize any person failing to comply with legal provisions relating to customs.

The Directorate General of Customs has checkpoints at strategic locations throughout the country.

Since ports in the Republic of Panama have been handed over to the private sector under concession agreements, private security staff are present at points of entry, and customs inspectors at goods shipment points (import and export). In this way, port areas are monitored and controlled by the customs authorities.

All customs staff working at ports and airports are duly identified by a pass issued by the customs authorities.

As mentioned above, the ports are managed and operated by private companies. Consequently, access is restricted to authorized personnel.

Airports and ports are provided with the necessary equipment for checking cargo and merchandise.

For shipments of dangerous materials the carrier, or the provider of the cargo transport service, is required to comply with the current national legal provisions governing such shipments.

1.8 How does Panama monitor its borders between ports of entry in order to satisfy itself both that these areas are not being used to undertake terrorist activities against its neighbours, as well as to defend itself against possible infiltration by terrorists? Does Panama have existing arrangements to cooperate with bordering States in order to prevent cross-border terrorist acts? If so, please elaborate.

In response to the terrorist attacks of 11 September 2001, Panama and its neighbouring States adopted measures to reduce the cross-border threat.

To ensure that Panama is a secure port with minimal levels of risk, measures have been adopted at the national and international level, including the following:

- Draft inter-agency agreement between the Panama Maritime Authority (PMA) and the National Maritime Service (NMS), to strengthen the security and protection of port zones and of Panamanian territorial waters.
- Draft security plan for ports, cruise ships and passenger ships. Its purpose is to ensure that the security entities and State agencies involved carry out their work in an integrated and coordinated manner, to prevent attacks against ships, port installations and personnel, and that related activities take place normally and in secure conditions.
- Adoption of the regulations contained in Chapter XI-2 of the International Convention for the Safety of Life at Sea (SOLAS), which enshrines the International Code for the Security of Ships and Port Facilities (ISPS Code). A Port Protection Committee is being created, with appropriate functions. The Committee's task is to collaborate with the Department of Maritime Protection. Also, if it considers it appropriate, it will test the effectiveness of protection plans for ships and port installations.

- **An agreement has been concluded between Panama and Colombia on binational border commissions (COMBIFRON), establishing a cooperation mechanism between the States parties in order to deal with the threat of criminal activities in the border area. The aforementioned Committee assesses cross-border threats, implements preventive measures and rectifies any irregularities that may arise. This mechanism protects the country from illicit activities of various kinds, provides protection against threats such as terrorism, and ensures better security in the country's ports.**

- **An agreement on cooperation on police-related matters has been concluded between the Ministry of Defence of Colombia and the Ministry of the Interior and Justice of Panama. This agreement seeks to create closer relations through the sharing of information between the two countries. Article 2 of the agreement establishes mechanisms for anti-terrorist measures.**